

## Federal Communications Commission

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Before the  
Federal Communications Commission  
Washington, DC 20554

2001 APR 20 A 11:18

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Mercer County School District	)	File No. SLD-160177
Princeton, West Virginia	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

**ORDER****Adopted: April 16, 2001****Released: April 17, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review submitted by Mercer County School District (Mercer County), Cleveland, Ohio.<sup>1</sup> Mercer County seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying some of its Funding Year 3 requests for discounts under the schools and libraries program.<sup>2</sup> For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all

<sup>1</sup> Letter from Nathaniel Hawthorne, Esq., on behalf of Mercer County School District, to Federal Communications Commission, filed June 7, 2000 (Request for Review).

<sup>2</sup> Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

potential competing service providers to review and bid upon.<sup>4</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>5</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.<sup>6</sup>

3. The Commission's rules further provide, however, that eligible schools and libraries with pre-existing contracts are exempt from the competitive bidding requirement under certain circumstances. In relevant part, section 54.511(c)(1) exempts contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract.<sup>7</sup> In such a case, the service request need not be subjected to competitive bidding. However, existing contract must have been reported on an FCC Form 470 either in the year of the funding request or in a prior funding year.<sup>8</sup> The applicant's FCC Form 471 must demonstrate compliance with the competitive bidding rules by specifying, for each funding request, the FCC Form 470 in which the contract was either posted for competitive bidding or reported as a pre-existing contract.<sup>9</sup>

4. It is these competitive bidding rules which are at issue in the pending Request for Review. Mercer County submitted an FCC Form 471 application for Funding Year 3 on January 17, 2000.<sup>10</sup> On May 26, 2000, SLD issued a Funding Commitment Decision Letter to Mercer

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<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000); *see also* SLD Website, <<http://www.sl.universalservice.org>>.

<sup>5</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

<sup>6</sup> *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (rel. 2000).

<sup>7</sup> 47 C.F.R. § 54.511(c)(1). *See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1997) (*Fourth Order on Reconsideration*).

<sup>8</sup> *See* SLD Website, Reference, Frequently Asked Questions, <<http://www.sl.universalservice.org/reference/faq.asp#1>>.

<sup>9</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions) at 19.

<sup>10</sup> FCC Form 471, Mercer County School District, App. No. 160177, filed January 17, 2000 (Mercer County Form 471).

granting six of its twenty-five funding requests and denying the rest.<sup>11</sup> At issue now are six funding requests, Funding Request Numbers (FRN) 312404, 313595, 313597, 313598, 313602, and 313609, which SLD denied because it found that “[t]he 470 cited [in each of these requests] did not include service of this type, [and] therefore it does not meet the 28 day competitive bidding requirement.”<sup>12</sup> On June 7, 2000, Mercer County filed the pending Request for Review.

5. In its Request for Review, Mercer County asserts that it complied with the competitive bidding rules.<sup>13</sup> Mercer County notes that, in accordance with the Commission’s rules regarding pre-existing contracts, SLD program instructions provide that “[s]ervices that are covered by a qualified existing contract for all or part of the funding year do NOT require filing of a Form 470 since you are not seeking bids for these services and have submitted a Form 470 for the contract in a prior year. A qualified existing contract is: a signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year, OR a contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract.”<sup>14</sup> Mercer County asserts that it reported its pre-existing contracts in an FCC Form 470. More specifically, Mercer County argues that the six denied FRNs satisfy the second test for existing contracts, because they arise from contracts signed before July 10, 1997 which were reported in a Year 1 Form 470.<sup>15</sup>

6. The six funding requests at issue all reference FCC Form 470 No. 79820000009067, which was posted by the West Virginia State Department of Education in Funding Year 1.<sup>16</sup> The West Virginia Form 470 does not present any service requests for bidding, but does report a lengthy list of pre-existing contracts, each of which is specified only by the date the contract was signed and the contract termination date.<sup>17</sup> Mercer County notes that two of the listed pre-existing contracts were executed on July 8, 1997 and March 1, 1993 respectively. Mercer County asserts that these are the contracts underlying its current funding requests. It argues that since the contracts were signed before July 10, 1997 and were reported in a Form 470 which was cited by the funding requests at issue, Mercer County has fully satisfied its obligations under the competitive bidding rules stated above.

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<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Co., to Mercer County School District, dated May 26, 2000 (Funding Commitment Decision Letter).

<sup>12</sup> Funding Commitment Decision Letter at 6-9, 11.

<sup>13</sup> Request for Review at 2.

<sup>14</sup> See SLD Website, Reference, Frequently Asked Questions, <<http://www.sl.universalservice.org/reference/faq.asp#1>>.

<sup>15</sup> Request for Review at 2-3.

<sup>16</sup> See FCC Form 470, West Virginia Department of Education, Year 1, Universal Serv. Control No. 79820000009067 (West Virginia DOE Form 470). The data on the posted Form 470 does not include the date on which it was posted. However, it does specify that the allowable contract date for services requested in the form is April 11, 1998. West Virginia DOE Form 470 at 1. Given the 28-day waiting rule, the date of posting must therefore be on March 13, 1998.

<sup>17</sup> West Virginia DOE Form 470, at 2.

7. We conclude, however, that SLD reasonably found that Mercer County had not satisfied the competitive bidding rules. Although Mercer County now asserts that its requests all involved contracts existing before July 10, 1997, its FCC Form 471 specified that each request was based on a contract awarded on April 11, 1998. Further, after reviewing the record, we find nothing in the documentation accompanying the FCC Form 471. Therefore, in light of the April 11, 1998 contract award dates reported in the FCC Form 471, SLD appropriately looked, not to whether the contracts were "reported on a Form 470 in a previous year as an existing contract," the rule applicable only to contracts existing on or prior to July 10, 1997, but rather to whether there were signed, written contracts "executed pursuant to the posting of a Form 470."<sup>18</sup> It is clear and, indeed, undisputed that the contracts in question were not executed pursuant to the posting of the West Virginia DOE Form 470, since that form did not present any requests for services. Thus, on the record before it, SLD reasonably concluded that the cited Form 470 did not include the services requested, and that the competitive bidding rules had therefore been violated.

8. Along with its Request for Review, Mercer County provides new documentation supporting the assertion that the contract award dates reported in the FCC Form 471 were erroneous and that the relevant contracts were in fact executed prior to July 10, 1997. However, in light of the thousands of applications that SLD reviews and processes each funding year, we have found that it is administratively necessary to place on the applicant the responsibility of understanding the Commission's rules and procedures and carefully and accurately completing the relevant FCC Forms.<sup>19</sup> Thus, we have generally denied requests to correct data entry errors where the errors were made by the applicant and the applicant did not attempt to correct the error prior to the end of the application review process.<sup>20</sup> The documentation here, in effect seeking to correct the assertedly erroneous contract award dates reported in the FCC Form 471, will not be considered and do not, therefore, present a basis for reversing SLD's decision.

9. Mercer County alternatively argues in its Request for Review that its funding requests are presented in a Year 3 FCC Form 470 posted by Mercer County on December 20, 1999. FCC Form 470 No. 126210000284078.<sup>21</sup> The Year 3 FCC Form 470 presented various service requests for bidding. However, it is clear that the service requests posted in the Year 3

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<sup>18</sup> See SLD Website, Reference, Frequently Asked Questions, <<http://www.sl.universalservice.org/reference/faq.asp#1>>.

<sup>19</sup> See *Request for Review by Aikahi Elementary School*, File No. SLD-142759, Order, 15 FCC Rcd 17491, para. 4 (rel.).

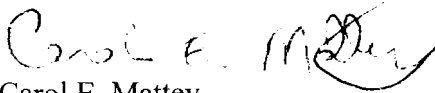
<sup>20</sup> See *Request for Review by Roaring Spring Community Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-79875, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 4504 (Com. Car. Bur. rel. Oct. 27, 1999), para. 2 (*Roaring Spring Community Library*); *Request For Review By Crookston Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-50583, Order, CC Docket Nos. 96-45, 97-21, DA 99-2955, para. 5 (Com. Car. Bur. rel. December 21, 1999) (denying SPIN change request where original SPIN was result of applicant error, finding that applicant's "failure to rectify its error in a timely manner provides an insufficient basis for granting the requested relief").

<sup>21</sup> FCC Form 470, Mercer County School District, filed December 20, 1999 (Year 3 FCC Form 470).

FCC Form 470 could not have led to competitive bidding on contracts that were signed prior to the date on which the form was posted, as the relevant contracts here indisputably were. Since the Year 3 FCC Form 470 could not possibly have presented these contracts for bidding, we must reject Mercer County's argument that this form has satisfied its competitive bidding obligations on the relevant requests. Instead, we find that on the record before it, SLD correctly denied funding to Mercer County for failure to comply with the competitive bidding rules.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. 0.91, 0.291, and 54.722(a), that the Request for Review filed by Mercer County School District on June 7, 2000 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Common Carrier Bureau